

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2000-587

April 18, 2001

PUBLIC UTILITIES COMMISSION
Investigation of AGF Direct Energy, LLC
Complaint Regarding Northern Utilities, Inc.'s
Transportation Service Metering and Balancing
Terms and Conditions and Rates

ORDER

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

We approve Northern Utilities, Inc.'s (Northern) revised rate schedule for Demand Delivery Service for immediate effect and close this docket.

II. PROCEDURAL HISTORY

On June 5, 2000, AGF Direct Energy, LLC (AGF), an energy marketer serving in Maine and other New England states, contacted the Commission to request that we review whether Northern's natural gas transportation metering requirements and balancing charges are reasonable.¹ AGF asserted that the transportation service terms that Northern has proposed in New Hampshire are less onerous to small transportation customers, and it requested that we consider whether it would be more financially beneficial to Northern to provide similar service terms in Maine.

On July 18, 2000, we opened a formal investigation, pursuant to 35-A M.R.S.A. §1303, into AGF's complaint to determine whether Northern's daily meter requirements and balancing charges were reasonable. The Commission made Northern a party to the proceeding and set a deadline for other interested persons to petition to intervene in the case.

¹ It appears that AGF has separate corporate entities for its gas and electricity providers. On August 30, 2000, in Docket No. 2000-622, we approved the transfer of a license issued to AGF Direct Gas Sales & Servicing, Inc. d/b/a AGF Direct Energy to operate as a competitive electricity provider in Maine to AGF Direct Energy, LLC. This complaint was filed on AGF Direct Energy, LLC letterhead, signed by its V.P. of Sales, Roland LaPierre. However, customer notice of termination of service was issued by AGF Direct Gas Sales & Servicing, Inc., which is the entity named on the Chapter 7, Title 11 U.S.C. bankruptcy petition pending before the United States Bankruptcy Court, District of New Hampshire.

The Office of the Public Advocate (OPA), Bangor Gas Company LLC, Maine Natural Gas, LLC, and Select Energy, Inc., an affiliate of Northeast Utilities System, filed timely petitions to intervene. The Hearing Examiner granted all petitions to intervene.

The Commission held a technical conference on August 3, 2000 to allow Advisory Staff and parties an opportunity to exchange and discuss information regarding AGF's complaint and to identify further actions toward resolution of this matter. Northern explained the basis for the transportation tariffs it has proposed for New Hampshire and compared that proposal with the tariffs currently effective in Maine. At the conclusion of the technical conference, the parties agreed to conduct settlement negotiations and report on their progress to the Commission at a later date. Northern filed reports on the progress of its negotiations with AGF on August 17 and 31, 2000. In the latter report, Northern indicated that it was preparing to circulate a finalized stipulation to the other parties in this proceeding.

On November 8, 2000, having received neither a stipulation nor further reports on the status of negotiations, the Hearing Examiner issued a procedural order requiring Northern to file a status report. On November 21, 2000, Northern filed its response along with a Motion to Dismiss AGF's complaint and to close this investigation, stating that negotiations between Northern and AGF could not be successfully completed. Northern reported that before completion of the draft stipulation, it learned from its transportation customers that AGF had notified them of its intent to terminate gas supply service effective September 1, 2000. Northern also filed the Affidavit of Richard M. Sasdi, Director of Customer Operations, dated November 17, 2000, which stated that "there are no longer any retail transportation customers served by Northern in the State of Maine who receive gas supply services from AGF."

In mid-November 2000, Mr. LaPierre contacted the Hearing Examiner to inform the Commission that AGF's Texas supplier, New England Energy Group, a division of Adams Resources, had retained all of AGF's Maine gas sales accounts.

On December 8, 2000, Northern filed a revised rate schedule for its monthly Demand Delivery Service (DDS) reservation charge, reducing it from \$2.977 per ccf of daily Demand Delivery Quantity (DDQ) to \$0.725 per ccf, as well as an exhibit indicating how it developed the proposed charge. Northern states that this charge updates the information provided in Docket No. 97-393 in which the currently effective DDS charge was approved and better reflects the cost of pure balancing resources.

III. RECORD

The record in this proceeding shall consist of all filings, transcripts, data responses, exhibits and other submissions in this docket.

IV. ANALYSIS

This case raises the following issues: 1) Are AGF's complaints about Northern's metering and balancing terms and conditions and rate schedules reasonable given its corresponding tariffs in effect in the neighboring state of New Hampshire; 2) Should we approve Northern's proposed revised DDS charge; and 3) Should we dismiss this complaint given the complainant's complete termination of gas service in Maine? We consider these questions individually below.

A. Complaint Issues

1. Non-Daily Metered Service

In its initial filing, AGF provided a copy of a memo from Northern to gas suppliers serving customers on Northern's system in Maine stating that Northern intended to begin charging new Maine transportation customers for the installation of a Metscan automated meter reading device beginning on June 1, 2000, consistent with its approved rate schedules. AGF expressed its concern that many small accounts would be unable to take advantage of Northern's transportation service because of the barrier created by the telemetering expense. Accordingly, AGF requested that the Commission determine "whether it may be more financially beneficial to Northern" not to require daily telemetering devices for customers whose usage is below 100,000 therms annually, consistent with the proposed Model Terms and Conditions developed in New Hampshire (NH) and Massachusetts.² The NH proposed Model Terms and Conditions provide for Non-Daily Metered Delivery Service where bills are calculated using a consumption algorithm for eligible customers.

At the August 3rd technical conference, Northern provided a comparison of New England LDC daily meter installation costs, which form the basis for the installation charges appearing in Northern's Maine rate schedules. See Northern Technical Conference Exhibit #1, "Other N.E. LDC Daily Meter

² The New Hampshire Model Terms and Conditions were developed by the New Hampshire Public Utilities Commission's gas staff in collaboration with gas utilities and gas suppliers serving in NH. They are based on Model Terms and Conditions that were developed in a similar collaborative process and have been approved by the Massachusetts Department of Transportation and Energy as part of that state's comprehensive gas restructuring effort. The NH Model Terms and Conditions are awaiting a Commission decision.

Charges, Metscan Installation and Operation Costs.” AGF concurred that Northern’s meter installation charges are reasonable. AGF maintained that a non-daily metered transportation service should be offered to smaller customers within Northern’s Maine service area.

Northern contends that it would be unwise to allow smaller customers who do not have telemetering devices installed to take transportation service. At the Technical Conference, Northern’s principal concern was that expanding the transport service option to smaller customers could result in significant cost increases to other customers and/or to stockholders, depending on the treatment of capacity assignment. We have not yet established the capacity assignment policy for Maine. More particularly, Northern expressed concern that expanding the scope of transport service by including smaller customers could result in Northern having to pay for pipeline capacity that was no longer needed to serve customers who choose to buy gas from other sources.

We agree that the capacity assignment issue requires consideration in a statewide generic gas restructuring proceeding to establish policy for all Maine’s gas utilities. We have deferred consideration of this issue pending further development of Maine’s gas commodity market, see *Central Maine Power Company, Petition for Approval to Furnish Gas Service In and To Areas Not Currently Receiving Service*, Docket No. 96-786 (Dec. 17, 1998) at 13-16 and we have initiated an inquiry into gas restructuring issues generally. *Maine Public Utilities Commission, Inquiry into Natural Gas Competition and Unbundling Issues*, Docket No. 99-342, Notice of Inquiry (June 4, 1999).³ We also agree that there is strong justification to resolve the capacity assignment issue before making non-daily metered service broadly available to small customers to avoid possible stranding of large amounts of Northern’s existing gas supply resources.

Northern and AGF began to negotiate a specific contractual arrangement that would resolve AGF’s concerns. Before completing negotiations, however, AGF became subject to bankruptcy proceedings and terminated all of its gas service in Maine. See Affidavit of Richard M. Sasdi. As a result of these circumstances, Northern asserts that AGF no longer has the requisite standing to maintain its complaint before the Commission or to execute a settlement to resolve the issues AGF raised in this proceeding. Accordingly, Northern proposes no further action on this issue in this proceeding. We concur for reasons more fully described in Section C below.

³ We temporarily suspended activity in this docket in September 1999 but will reactivate it as market conditions warrant.

2. Balancing

Balancing, also called Demand Delivery Service or DDS, is an optional service that Northern provides only to transport customers. Under Northern's transport tariffs, transport customers or their suppliers must maintain balance in their gas purchases and usage within a 10% bandwidth. If their daily gas swings are outside that bandwidth tolerance, they pay an additional fee or penalty charge. DDS is an optional service that, in effect, allows customers to purchase a wider bandwidth to avoid paying this penalty. It functions, essentially, as an insurance policy against potential large imbalance swings.

AGF contends that Northern's daily balancing charge in Maine is nearly ten times greater than its corresponding charge in New Hampshire, \$0.322 per therm in NH compared with \$2.977 per ccf in Maine. AGF noted that the cost to customers and suppliers under Northern's Maine charge would amount to nearly one-third of the total commodity cost (nearly \$300 when commodity cost is \$900, assuming \$0.30 per ccf for 100 ccf per day for one month.) This compares to the NH charge of only \$33.16 for the same commodity.

Northern's current transportation tariffs, including the balancing charge, were approved for effect on November 1, 1999 by stipulation in Northern's most recent rate design and service unbundling proceeding. *Northern Utilities, Inc., Proposed Tariff Revisions – Request for Approval of Rate Redesign and Partial Unbundling Proposal*, Docket No. 97-393, Part One Order Approving Stipulation (Sept. 3, 1999). At the technical conference, Northern stated that it had analyzed the cost of balancing service in Docket No. 97-393 by considering the cost of a number of resources, which serve both balancing and supply functions on its system, and used the cost of these resources in developing its recommended balancing charge of \$2.977 per ccf. This relatively high cost included the costs of Northern's contractual capacity commitments for MCN storage and the Portland Natural Gas Transmission System (PNGTS) interstate pipeline. However, at the technical conference, Northern's witness stated that on further reflection, he was not certain that including these two sources as part of the balancing costs was justified. In fact, when proposing a similar charge in New Hampshire, he had excluded these costs. Tr. A-91-95. In effect, Northern concurred with AGF that Maine's charge was out-of-line with updated balancing resource costs and proposed to file a revised Demand Delivery Service rate schedule for approval. Northern indicated it would submit a proposed revised DDS rate schedule for approval, consistent with the charge established in NH. AGF was satisfied with this resolution. Tr. A-106.

B. Revised Demand Delivery Service Tariff

On December 8, 2000, Northern filed a revised DDS tariff with a charge of \$0.725 per ccf. AGF did not comment on Northern's proposed revised

rate schedule, but it had indicated its agreement with Northern's proposal to revise the charge at the August 3 technical conference. Northern asserts that the balancing resource cost data used to develop this proposed revised Maine DDS charge is consistent with that used to develop the charges in the Model Terms & Conditions now pending before the NH PUC. Tr. A-90-95.

We accept Northern's proposed change and its current position that the costs assigned to DDS service in Docket No. 97-393 were too high. We note Northern's testimony that all five of its DDS customers dropped the service when the price was raised to \$2.997, which supports the argument that it was priced too high. Tr. A-95

C. Motion to Dismiss

On November 21, 2000, Northern reported that all of those customers previously being served by AGF were then being served by another retail third party natural gas supplier or had transferred back to Northern's bundled sales service. In light of the termination of AGF's gas supply activities to Northern's customers and because it does not expect AGF to resume its gas activities in Maine, given that AGF is subject to involuntary bankruptcy proceedings, Northern requests that we dismiss this complaint.

As a result of these circumstances, Northern asserts that AGF no longer has the requisite standing to maintain its complaint before the Commission or to execute a settlement to resolve the issues AGF raised in this proceeding. Accordingly, Northern proposes that we dismiss this complaint and take no further action to resolve the remaining issues raised by AGF.

We concur with Northern that AGF apparently no longer has standing to require us to investigate and resolve the issues it raised in its June 5 complaint. However, as an agency charged with the oversight of public utilities, we must further determine whether the issues raised by AGF are sufficiently significant to the greater public interest that we should seek their resolution, with or without AGF's continued participation.

Whether a gas utility's charges are reasonable is clearly a matter of larger public interest and one that we have the duty to pursue and resolve. Northern has submitted a revised DDS tariff proposed to bring its charges into line with current costs to provide that service. Because we have an adequate record before us to judge the DDS tariff revision we see no reason to decline to do so, and approve those changes.

On the other hand, whether Northern should offer non-daily metered service and what size customers will be eligible for it are questions that require resolution following resolution of the issue of mandatory capacity assignment. We also believe that those issues should be considered in a

broader, "generic" proceeding. Thus, we conclude that we should not pursue this issue further in this proceeding.

Based on the above, we find that this docket should be closed.

V. CONCLUSION

We approve Northern's proposed revised Demand Delivery Service rate schedule for effect upon filing of a duly executed original with this Commission. We decline to determine in this proceeding whether Northern should offer non-daily delivery service and, if so, to what customers. We intend to consider fundamental gas restructuring issues, such as mandatory capacity assignment, in a future generic proceeding.

Accordingly, we grant Northern's motion to dismiss the AGF complaint and to close this docket.

Dated at Augusta, Maine, this 18th day of April, 2001.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR:

Welch
Nugent
Diamond

COMMISSIONER ABSENT:

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.